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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/723,651	11/25/2003	William B. Morgan	03-12769	8796
25189	7590	10/01/2004	EXAMINER	
CISLO & THOMAS, LLP			LINDSEY, RODNEY M	
233 WILSHIRE BLVD			ART UNIT	
SUITE 900			PAPER NUMBER	
SANTA MONICA, CA 90401-1211			3765	

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/723,651

Applicant(s)

MORGAN ET AL.

Examiner

Rodney M. Lindsey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12-36 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 21 and 35 are objected to because of the following informalities: in claim 21, last line "bracket" it appears should be --band-- and claim 35 it appears should depend from claim 32. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7, 15, 16, 18, 20, 25, 27, 29 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 18 "said coupling structure", in claim 20 "said coupling structure of said at least one bracket", in claim 25 "said coupling structure" and in claim 27 "said coupling structure of said at least one bracket", all, have no antecedent basis. In claims 7, 15, 16, 29 and 34 the scope of the limitation "loop-like" cannot be determined. It appears that "loop-like" should read --loop--.

### ***Double Patenting***

4. Applicant is advised that should claim 31 be found allowable, claim 35 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-9, 12-19, 21-26 and 28-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Tischer et al. With respect to claims 1, 6, 12, 16, 21, 28, 29, 30, 32, 33 and 34 note for instance Figure 16 and the mask 112, hood 113, mount band 148 and harness 176. With respect to claims 2-4, 12, 18, 21, 22 and 23 note bracket 121. With respect to claims 5, 8, 13, 14, 17, 24, 25, 28 and 32 note the coupling structures 162. With respect to claims 7, 15 and 29 note the orifices in the hood through which 162 projects. With respect to claims 9, 19, 26, 31 and 35 note coupling structure 164. Further with respect to claims 28 and 32 note the orifices in the rear of harness 174, 176 as shown as netting in Figure 13 equivalent to the orifices as claimed. With respect to claim 36 note the provided mask 112 and bracket 121, the provided hood 113 and mount band 148 and the coupling of the hood and mask.

7. Claim 36 is rejected under 35 U.S.C. 102(b) as being anticipated by Jones '663. Note the provided mask at 11 and bracket at 17, the provided hood at 12 and mount band equivalent to the integral front portion of hood 12 containing the openings for receiving 17, 18 and note the coupling of the hood 12 and mask 11.

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***Allowable Subject Matter***

8. Claims 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 20 and 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

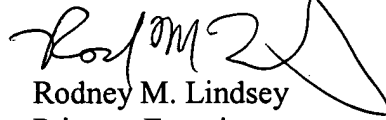
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, note the hoods, harness and facemasks of Gamberini, Fabin, Reischel et al., British patent to Simpson, L'Abbe et al., Monroe et al., Andrews et al., Jones '234 and Morgan '556.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (703) 305-7818. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Rod M 2', with a large, sweeping loop at the end.

Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

rml